

1 withdraw from the Plea Agreement if: (a) the Court imposes consecutive sentences of
 2 imprisonment on Count 1 and Count 2, which when aggregated, exceed a total term of
 3 imprisonment of 30 years; or (b) the sentences of imprisonment on Count 1 and Count 2
 4 are not imposed concurrently to Defendant's Yakima County sentence.

5 The United States submits that the Court should accept the plea agreement based
 6 on the applicable Section 3553(a) factors and also the parties' determination that a
 7 resolution at this juncture of the case is in the interest of the Defendant, the victims in
 8 this case, and the interests of justice. In sum, the United States submits that concurrent
 9 30-year terms of imprisonment on both counts (effectively a total term of imprisonment
 10 of 30 years) satisfies the 18 U.S.C. § 3553(a) factors, so as to allow the Court to accept
 11 the plea agreement. In addition, given the related nature of Defendant's state and federal
 12 cases, the Court should also accept the parties' agreement that Defendant's federal
 13 sentence be imposed concurrently to Defendant's Yakima County sentence.

14 II. Section 3553(a) Sentencing Factors

15 Based on the Section 3553(a) sentencing factors, the Court should impose
 16 concurrent terms of imprisonment of 30 years on Counts 1 and 2, as well as, a lifetime
 17 term of supervised release. Contrary to Defendant's request for a 15-year total term of
 18 imprisonment in his sentencing memorandum, a 30-year total term of imprisonment is
 19 warranted here based on the nature and circumstances of the offense, Defendant's
 20 history and characteristics, to protect the public, and to provide for deterrence.

21 With regard to the nature of the offense, the egregiousness of the offense alone
 22 calls for 30 years of imprisonment, rather than Defendant's request for 15 years of
 23 imprisonment. Defendant's production of child pornography involving four-year old
 24 Minor A and eight-year old Minor G, as referenced in the factual basis of his plea
 25 agreement below, sufficiently reflect the need for a 30-year term of imprisonment:

26 On March 31, 2016, Witness 1 reported to the Selah Police Department
 27 (Selah PD) that four-year old Minor A had been molested by the Defendant.
 28 Witness 1 found Defendant lying in bed with Minor A. Both Defendant and

1 Minor A were nude from the waist down. Witness 1 reported that Defendant
2 made a statement similar to, “No, no, no my life is over.” Witness 1 picked
3 up Defendant’s iPhone and took two photographs of the scene, one of Minor
4 A and one of Defendant. Minor A was very upset, and Witness 1 had to
5 calm her down. A sexual assault examination of Minor A at the hospital
6 showed that she had been sexually abused, that she had an inflamed genital-
7 anal area and rash.

8 Later that evening, Defendant turned himself in at Selah PD. Post-Miranda,
9 Defendant stated that had come to the police department, because “This
10 morning I touched [Minor A] in an inappropriate manner. It’s not the first
11 incident and [Witness 1] walked in.” Defendant continued, “I had her pants
12 down and I was rubbing my penis against her vagina.” Defendant again
13 admitted he had done this before. Defendant denied penetrating Minor A,
14 because “she’s too little; she’s small.” Defendant stated that Minor A’s
15 pants were down and was just wearing a pajama top. Defendant described
16 the pajamas as blue with candy canes on them. Defendant denied actively
17 trying to view pornography or child pornography. He indicated, “I don’t
18 think so, no,” regarding whether his laptop or desktop computer would
19 contain pornography. Selah PD obtained consent from Defendant to obtain
20 a DNA sample. Defendant was arrested, and later convicted of, state
21 charges for First Degree Child Molestation involving Minor A.

22 Various items pertaining to Defendant’s sexual abuse and production of
23 child pornography involving Minor A were seized and examined by means
24 of search warrants, such as, Defendant’s iPhone, pajamas, bedding, clothing
25 items, computers, and digital media. During the course of a forensic
26 examination, Secret Service SA Huntoon located approximately 2,173
27 images of child pornography on Defendant’s Lian Li desktop tower
28 computer. Many of these images were recovered from unallocated space on
the drives, indicating that they had been previously deleted. SA Huntoon
also uncovered sexually explicit images of Minor A and Minor G on
Defendant’s Lian Li desktop computer.

On May 16, 2016, SA Huntoon identified various sexually explicit images
that appeared similar to Minor A. After being shown the images, Witness 1
stated that the images actually depicted eight-year old female Minor G. Law
enforcement met with Witness 2 who confirmed that Minor G had been at
Defendant’s residence on several occasions within the past year. Witness 2
identified Minor G in numerous sexually explicit images obtained from
Defendant’s computer. Witness 2 also identified Minor G’s sleeping bag
and pajamas in the images, which were then provided to the police. A
variety of the images depicted Defendant’s penis being inserted into Minor
G’s mouth and Defendant’s fingers being inserted into Minor G’s rectum,
while other images focused in on Minor G’s genital-anal area. Witness 2
indicated that Minor G had been left alone with Defendant on several prior
occasions within the last year and on two occasions by May of 2016. Later

1 DNA testing confirmed the presence of Defendant's semen on Minor G's
2 sleeping bag.

3 On June 3, 2016, while reviewing the computer locations of child
4 pornography produced by Defendant involving Minor G, SA Huntoon
5 located an additional 80 images of child pornography involving Minor G.
6 While reviewing Defendant's Lian Li Desktop Computer, SA Huntoon also
7 located two images of child pornography Defendant had produced involving
8 Minor A. The images displayed bedding seized from Defendant's residence,
9 Minor A's candy cane patterned pajamas, and a penis entering the minor's
10 rectum.

11 The computers and devices that Defendant used to produce and store the
12 child pornography images of Minor A and Minor G had been mailed,
13 shipped, and transported across state lines and in foreign commerce.
14 Defendant produced the child pornography images of Minor A and Minor G
15 in the Eastern District of Washington. Further, Defendant used Minor A and
16 Minor G to take part in sexually explicit conduct for the purpose of
17 producing visual depictions of such conduct.

18 ECF No. 107.

19 In addition to Defendant's sexual abuse of Minor A and Minor G above, which his
20 sentencing memorandum refers to as a "great evil" (ECF No. 116 at 10), Defendant's
21 history and characteristics, as set forth in the PSR, also reflect the need for 30 years of
22 prison. Though Defendant's sentencing memorandum implies that his acts were isolated
23 events that he would not do over, the PSR tells a different story. According to the PSR,
24 Defendant also molested an 11-year old girl multiple times over the course of a couple
25 years in Nevada starting in 1991. Defendant, approximately 23 years old at the time,
26 touched the victim multiple times on her breasts and vulva as if he were tickling her.
27 Another victim in the same case reported that Defendant abused her when she was
28 between the ages of 5 and 8 years old by taking off her pants and underwear and
examining her vagina with his finger or a Q-tip. In 2019, Defendant ultimately pleaded
guilty in Nevada to Open or Gross Lewdness in the Presence of a Child or Vulnerable
Person and was sentenced to 12 to 30 months imprisonment. *See* PSR ¶¶ 97-104.
Defendant's history as a sexual predator shows the need for a 30-year term of
imprisonment in this case to protect the public and prevent him from victimizing others.

1 Defendant's recommended sentence of 15 years is insufficient to ensure that he will not
2 victimize more children upon release.

3 Additionally, the Court should discount Defendant's characterization of his
4 Yakima County sentence as a "sentence of life imprisonment." Defendant's repeated
5 inflation of his sentence to a "life sentence" does not erase the fact that he was sentenced
6 to a minimum term of 10 years in prison, and up to life. As Defendant concedes, no one
7 can predict how long he will serve on his state sentence, whether it be a mere 10 years,
8 or life. Regardless, the United States recommends that the sentence herein be imposed
9 concurrently to Defendant's state sentence given the related nature of the offenses.

10 The Court should also discount Defendant's effort to downplay the severity of the
11 federal production of child pornography charges. Whether or not Defendant distributed
12 child pornography, the fact is that he made a permanent visual record of the abuse of
13 Minors A and G, presumably to gratify himself with later viewings. Why else would he
14 make a record of it, but to view it at a later time?

15 Though Defendant agrees no double jeopardy concerns existed here, he
16 nevertheless questions the merit of the instant federal charges, particularly as he
17 contends he already received a "life sentence" from the state. ECF No. 116 at 10.
18 Again, Defendant's characterization is inflated. He was not sentenced to life
19 imprisonment in Yakima County. Rather, Defendant was sentenced to 10 years to life in
20 prison, and Defendant may only end up serving 10 years for that offense. In addition,
21 Defendant was not convicted in Yakima County for Defendant's conduct involving
22 Minor G. Based on the foregoing, federal charges were wholly warranted here given the
23 egregious nature of Defendant's production of child pornography as to two victims.

24 The government also disagrees with Defendant's contention that he is "capable of
25 self-control." *Id.* at 11. Defendant's recent sexual abuse of two vulnerable children and
26 his historical abuse of two other children in the 1990s dispels any idea that he will be
27 capable of self-control anytime soon. Similarly, Defendant's contention that the

1 “circumstances created his crimes” in this case further refutes the idea that he is capable
 2 of self-control. Following Defendant’s logic, if he were put in the wrong circumstances
 3 again, the “circumstances” might just cause him to recidivate and commit another child
 4 sex offense. With regard to Defendant’s argument that he is unlikely to recidivate, the
 5 PSR again tells a different story. His sexual abuse of the two children in this case and his
 6 prior molestation of two other children unfortunately shows a long pattern of preying on
 7 children for sexual gratification.

8 Finally, Defendant’s argument with regard to the Guidelines can also be tempered
 9 by the fact that though the Guidelines serve as a starting point for sentencing, the Section
 10 3553(a) factors additionally guide the Court in sentencing. Additionally, “The child
 11 pornography Guidelines are, to a large extent, not the result of the Commission’s
 12 ‘exercise of its characteristic institutional role,’ which requires that it base its
 13 determinations on ‘empirical data and national experience,’ but of frequent mandatory
 14 minimum legislation and specific congressional directives to the Commission to amend
 15 the Guidelines.” *United States v. Henderson*, 649 F.3d 955, 962-63 (9th Cir. 2011).
 16 Therefore that district courts have discretion to deviate from the Guidelines based on
 17 policy disagreements with § 2G2.2. *Id.* at 964. However, as *Henderson* also noted,
 18 “district courts are not obligated to vary from the child pornography Guidelines on
 19 policy grounds if they do not have, in fact, a policy disagreement with them.” *Id.*
 20 (“application of § 2G2.2 will always result in an unreasonable sentence”). “[S]entencing
 21 courts must continue to consider the applicable Guidelines range as the starting point
 22 and the initial benchmark.” *Id.* (quotation omitted). If the Court believes the guidelines
 23 produce an appropriate sentence, it should not “second-guess [that] decisio[n] . . . simply
 24 because the particular Guideline is not empirically-based.” *United States v. Mondragon-*
 25 *Santiago*, 564 F.3d 357, 367 (5th Cir. 2009); *see also United States v. Coleman*, 635
 26 F.3d 380, 383 (8th Cir. 2011) (“argument that the child pornography Guidelines are
 27 unsupported by empirical evidence is not an issue of substantive reasonableness and not

properly made to this court”).

All of that said, in this case, the United States seeks a 30-year term of imprisonment on each count to run concurrent to each other and to Defendant’s Yakima County sentence. Such a sentence accounts for the nature of Defendant’s offense, his history and characteristics, and the need to provide just punishment, deter further criminal conduct, and protect the public. Based on Defendant’s current and past victimization of children, a lifetime term of supervised release should also be imposed.

With regard to restitution, the Court has scheduled a separate restitution hearing in this case for February 10, 2020. The United States anticipates providing additional victim restitution documentation prior to that date to aid the Court in any restitution determination.

DATED: November 10, 2020

William D. Hyslop
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By: s/ Ian L. Garriques
Ian L. Garriques
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I hereby certify that on November 10, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following attorney of record: Jeremy Sporn

s/ Ian L. Garriques
Ian L. Garriques
Assistant United States Attorney